



Rule(s) Review Checklist Addendum
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document Reviewed (include title):

- **WAC 458-20-190 (Rule 190) Sales to and by the United States, its departments, institutions and instrumentalities--Sales to foreign governments.**
- **WAC 458-20-191 (Rule 191) Federal Reservations**

Date last reviewed:

- **Rule 190 - August 18, 1998**
- **Rule 191 - February 26, 1999**

Current Reviewer: **Cindy Evans**

Date current review completed: **February 14, 2002**

Is this document being reviewed at this time because of a taxpayer or association request? (If "YES", provide the name of the taxpayer/association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** **X**

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Briefly describe the subject matter of the rule(s):

- **Rule 190 explains the business and occupation, retail sales, use and public utility taxes that apply to persons doing business with the United States Government. The rule also explains that retail sales and use taxes do not apply to the United States Government and foreign governments, and provides a list of entities that are considered tax-exempt departments, instrumentalities, or agencies of the federal government.**
- **This rule explains the various excise taxes imposed on persons conducting business upon federal reservations such as military bases, or doing business with persons located on areas under the control of the federal government. The rule acknowledges that no tax may be collected from the United States or any authorized purchaser therefrom. Rule 191 also clarifies that while no tax is imposed on the federal government itself, B&O tax applies to the vendor making sales to the federal government.**



2. Related statutes, interpretive statements, court decisions, BTA decisions, and WTDs: (Excise Tax Advisories (ETAs), Property Tax Advisories (PTAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered interpretive statements.)

YES	NO	
	X	Are there any statutory changes subsequent to the previous review of these rules that should be incorporated?
	X	Are there any interpretive statements not identified in the previous review of these rules that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) subsequent to the previous review of these rules that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of these rules that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of these rules with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

3. Additional information: Identify any additional issues (other than that noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

Rule 190 and Rule 191 can be rewritten and reorganized in a clearer and more concise manner.

The department recently adopted ETA 2007, taxability of federal instrumentalities or federally created corporate entities, to explain the process for determining whether or to what extent a federal instrumentality or federally created corporate entity is subject to tax. In light of the constant changes in federal law, the adoption of this ETA will ensure that taxpayers and department personnel alike will have sufficient guidance in how to determine current tax status of federally created entities. This ETA eliminates the need for the Department to provide and maintain lists of taxable/nontaxable federally



created entities in other documents (including Rule 190, which currently identifies federally created entities that are no longer in existence).

4. LISTING OF DOCUMENTS REVIEWED: The reviewer need identify only those documents that were not listed in the previous review of the rule(s). (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive statements, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented: **None**

Interpretive statements (e.g., ETAs and PTAs):

ETA 2007.04.190, Taxability of federal instrumentalities or federally created corporate entities

Court Decisions: **None**

Board of Tax Appeals Decisions (BTAs): **None**

Administrative Decisions (e.g., WTDs):

- **Rule 190 - Determination No. 92-239, 17 WTD 32 (1992) (holding that a contractor who performs work for a federally chartered credit union is the consumer for retail sales/use tax purposes).**
- **Rule 190 - Determination No. 98-151E, 18 WTD 74 (1998) (holding that a fiscal intermediary for Medicare is not a federal instrumentality).**
- **Rule 190 - Determination No. 99-136E, 19 WTD 262 (2000) (holding that a bankruptcy trustee is not so closely connected to the United States that it cannot be viewed as a separate entity and, therefore, its gross income is subject to tax and it must pay retail sales tax on its purchases of equipment).**

Attorney General’s Opinions (AGOs): **None**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):



4. Review Recommendation:

- X **Amend**
- _____ **Repeal** (Appropriate when repeal is not conditioned upon another rule-making action.)
- _____ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- _____ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
 - Incorporate legislation;
 - Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
 - Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).
-
- **As noted in the rule review completed in August 1998, Rule 190 should be revised to incorporate ETA 258.08.190 and reorganized into a more reader friendly format to facilitate reader understanding. Many of the recommendations regarding specific issues or information to be incorporated into a revised rule continue to apply. The department nonetheless may want to reconsider the following previous recommendations to incorporate the provisions of :**
 - **RCW 82.04.263 (chapter 112, Laws of 1996). This statute provides a specific tax rate for certain activities related to the cleanup of radioactive waste and other byproducts of weapons production and nuclear research and development. The department should consider other alternatives as the specialized nature of the activity covered by RCW 82.04.263 may not lend itself to the more general nature of materials covered in Rule 190.**
 - **RCW 82.04.2635 (chapter 308, Laws of 1998). This statute provides a specific tax rate for certain environmental remedial actions. This information should not be included in the revised Rule 190 as the statute expires on July 1, 2003. Additionally, the nature of this activity may also be too specialized for Rule 190.**
 - **As mentioned in the previous recommendation for Rule 190, the information contained in Rule 191 (taxes imposed on persons conducting business upon federal**



reservations) fits well within the scope of Rule 190. When Rule 190 is revised, the information contained in Rule 191 should be incorporated into it and Rule 191 should be repealed.

5. Manager action: Date: _____

_____ Reviewed and accepted recommendation

Amendment priority:

_____ 1
_____ 2
_____ 3
_____ 4